

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA  
ROOM 211  
FEDERAL BUILDING AND U.S. POST OFFICE  
225 SOUTH PIERRE STREET  
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT  
BANKRUPTCY JUDGE

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August 23, 2005

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Attorney for Defendant  
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Subject: ***Lovald v. Home Federal Bank***  
***(In re Jay Scott Pliska)***  
Adv. 05-4036  
Chapter 7; Bankr. No. 05-40058

Dear Counsel:

The matter before the Court is Plaintiff-Trustee John S. Lovald's complaint for turnover of \$200,000.00, representing the payout under a term life insurance policy owned by Debtor on the date he filed his chapter 7 petition. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052. As set forth below, an order will be entered dismissing this adversary proceeding.

**Summary.** The parties filed stipulated facts on August 10, 2005. Those facts are incorporated by reference herein.

**Discussion.** Property of the estate includes, *inter alia*, "all legal or equitable interests of the debtor in property as of the commencement of the case," and the "[p]roceeds, product, offspring, rents, or profits of or from property of the estate." 11 U.S.C. § 541(a)(1) and (6).

In this case, there appears to be no dispute that Debtor's term life insurance policy was property of the estate. However, it is the payout to Debtor's daughter Alexis J. Pliska, the named beneficiary under that policy, not the policy itself, that is at issue herein.

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Plaintiff has not shown that Debtor had any legal or equitable interest in the post-petition payout under his term life insurance policy. That payout does not represent proceeds, product, offspring, rents, or profits from that term life insurance policy. See *In re Loren E. Volberding*, Bankr. No. 95-40368, slip op. at 2 (Bankr. D.S.D. Dec. 20, 1995) ("The 'proceeds' of a life insurance policy is its surrender value.") (citation omitted). Thus, the payout under Debtor's term life insurance policy is not property of the estate. Plaintiff is not entitled to an order for turnover with respect to any portion of that payout.

The Court will enter an order dismissing this adversary proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "Irvin N. Hoyt", with a stylized flourish at the end.

Irvin N. Hoyt  
Bankruptcy Judge

INH:sh

cc: case file (docket original; serve parties in interest)